

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI  
WESTERN DIVISION

JOSEPH MARTIN, III, #21810

PLAINTIFF

VERSUS

CIVIL ACTION NO. 5:07cv158 KS-MTP

BRIAN SEYFARTH

DEFENDANT

**ORDER ON MOTIONS**

THIS MATTER is before the court on several motions filed by defendant. Having considered the motions and the entire record in this matter, the court finds and orders as follows:

1. Defendant's Motion for a More Definite Statement [23] is denied. At the *Spears* hearing on January 10, 2008, plaintiff was given an opportunity to clarify the claims in his Complaint. Plaintiff did so, and this court followed up with an Order Denying Ore Tenus Motion to Dismiss [26], which found that - having liberally construed the Complaint as this court is required to do<sup>1</sup> - plaintiff states an excessive force claim under the Fourth Amendment.

2. Defendant's Motion for Judgment on the Pleadings [22] is denied. As stated above, the court has found that at this juncture, plaintiff states an excessive force claim under the Fourth Amendment. In denying the motion, the court is not, of course, expressing any opinion as to the merits of plaintiff's claim, but is merely allowing the case to proceed forward for further factual development.

3. Defendant's Motion to Stay Proceedings [24] is denied as moot.

SO ORDERED and ADJUDGED this the 23rd day of January, 2008.

s/ Michael T. Parker

United States Magistrate Judge

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<sup>1</sup> *Pena v. United States*, 122 F.3d 3, 4 (5th Cir. 1997) (citation omitted).